

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. NO.3751 of 2017

This the 8th day of August 2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Shri Faizur Rehman kazmi, Aged 56 years,
S/o Shri Jamilur Rehman Kazmi
Ex-Commercial Superintendent, Group C
Under Divisional Railway Manager
North Eastern Railway
Izatnagar
R/o U.S. 48, Street No. 2
Mandawali, Delhi

....Applicant

(By Advocate : Ms. Meenu Mainee)

VERSUS

Union of India: Through

1. General Manager
North Eastern Railway
Gorakhpur

2. Divisional Railway Manager
North Eastern Railway
Izatnagar

.....Respondents

(By Advocate : Shri Krishan Kant Sharma)

O R D E R (Oral)

By filing this OA, the applicant is seeking the following
reliefs:-

- i) That the Hon'ble Tribunal may be graciously
pleased to allow this application and quash the
Impugned order No.
P/207/Commercial/14.06.2017/Faizur Rehman
Kazmi, dt. 04.08.2017 issued by DRM (P), Izatnagar
(Annexure A-I)

- ii) That the Hon'ble Tribunal may further be graciously pleased to direct the respondents to release the gratuity of the applicant as well as other pensionary benefits like monthly pension, commutation of pension, leave salary as also insurance amount.
- iii) That the Hon'ble Tribunal may also be graciously pleased to direct the respondents to pay interest on the aforesaid amount from the date when the amount due till the date of actual payment.
- iv) That the Hon'ble Tribunal may further be graciously be pleased to pass any other or further order as may be deemed fit and proper on the facts and circumstances of the case.
- v) That the Hon'ble Tribunal may also be graciously pleased to grant costs against the respondents and in favour of the applicant.

2. The instant Original Application (OA) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, assailing the impugned Annexure A-1 order dated 04.08.2017. He has prayed for quashment of impugned order with a direction to the respondents to release his gratuity and other pensionary benefits like pension, commutation of pension, leave salary as also insurance amount along with interest.

3. Briefly stated, the facts of the case are that the applicant was initially appointed as a Booking Clerk on compassionate grounds on 29.02.1961 after the death of his father. Subsequently he earned his regular promotions and was finally promoted as Commercial Superintendent in the year 2010 in

the Grade Pay of Rs.4200/-. While he was working at Ram Nagar he was transferred to Bareilly on 14.08.2014. He was also subjected to medical examination at Ram Nagar because of his eye problem and was declared fit. He was diagnosed with Healed Choroiditis. Accordingly, the Chief Medical Superintendent, Izatnagar wrote to Director, R.P. Centre, All India Institute of Medical Sciences (AIIMS) on 03.02.2014 requesting for valuable opinion signed by a Consultant regarding visual status of the applicant and chances of improvement by available treatment modalities. Thereafter, Sr. Resident of AIIMS issued a certificate on 02.08.2014 in terms of which the applicant's visual acuity in both the eyes was declared as 6/60 and he was declared as 40% handicapped. Accordingly, the Chief Medical Superintendent, Izatnagar wrote a letter to DRM (P), North Eastern Railway, Izatnagar for taking necessary action in view the medical certificate issued by Chief Medical Superintendent and requested for progress of the case to be intimated to him.

3.1 Thereafter, Assistant Personnel Officer, North Eastern Railway, Izatnagar had issued a certificate in terms of which the applicant was declared fit by the Railway Doctors in category C-I. The applicant submitted a representation on 10.08.2016 to Sr. DRM (P), North Eastern Railway, Izatnagar wherein he submitted that he was transferred temporarily to Bareilly city and that he was subjected to special medical examination to Divisional Medical Officer, Izatnagar on

21.01.2015 which is yet to be decided. He, therefore, requested DRM to allow him to continue to occupy quarter No.7(b), Ram Nagar, in his occupation.

3.2 However, vide letter dated 1.9.2016 DRM's office, Izatnagar wrote a letter to Bill Branch of Izatnagar, informing that the quarter was allotted in favour of one Faizur Rehman Kazmi on 30.06.2010 and he had now taken over at Bareilly City on 14.08.2014 and the damage rent at the rate of Rs.5456/- may be recovered from his pay. The applicant submitted a representation to DRM, North Eastern Railway, Izatnagar wherein he stated that he was not at all at fault and the entire delay was on the part of the Railways, who had not decided his case and that he was not appointed permanently at any station. As his transfer was temporary, he could not have vacated the quarter at Ram Nagar and, therefore, requested that justice be done to him and whatever recovery had been made, should be refunded to him.

3.3 As he claims, the action of the respondents in imposing the damage rent against the applicant was unjustified, he submitted a representation to the DRM (C) in terms of which he stated that he had vacated the railway quarter No.7(B), Ram Nagar on 16.11.2016 which has been allotted to one Shri Jagdish Singh Rana, Head Ticket Collector, Ram Nagar but the recovery from his salary was still continuing and the HRA was also not being paid. In this regard, he stated that an amount

of Rs.12320/- is being recovered from his salary for the months of September to December, 2016 and January, 2017. He, therefore, requested that the excess amount which had been recovered may be refunded to him. Thereafter the applicant submitted another representation to Sr. Divisional Commercial Manager on 30.04.2017 wherein he submitted that the charge of work allotted to him may be transferred to some other employee because his request for voluntary retirement has been accepted w.e.f. 14.06.2017. Thereafter, wife of applicant also submitted a representation to Sr. Divisional Commercial Manager for transfer to Kashipur but justice was not done to him and due to highhandedness on the part of the railways he had submitted an application for voluntary retirement but nobody had been posted vice him. Ultimately, he was allowed to retire on voluntary basis on 14.06.2017. Thereafter, the respondents without any notice on the applicant passed an order on 4.8.2017 in terms of which an amount of Rs.6,94,239 had been fixed for recovery from his retiral dues and out of which an amount of Rs.5,54,126/- which was the amount of gratuity had not been paid and had been adjusted against the said recovery. In this regard it is submitted that there was no question of any excess payment made to the applicant nor has it been explained and a heavy amount of Rs.6,24,882/- had been sought to be recovered and had been recovered from his gratuity. In support of his claim, the applicant has relied upon a decision

of the Hon'ble Apex Court in the case of **State of Punjab v. Rafiq Masih**, [2014 (3) SLJ 136].

4. Heard learned counsel for the parties and carefully gone through the pleadings on record. The applicant applied for voluntary retirement which was accepted w.e.f.14.06.2017. Once the applicant has been allowed to retire voluntarily, the action of the respondents in effecting post-retirement recovery from the gratuity of the applicant is against the law laid down by the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) particularly when he belongs to Group 'C'. Moreover, before effecting such recovery, he was not put to notice while passing the impugned order of recovery. The representation of the applicant against the aforesaid recovery was not dealt with by the respondents. Hence the action of the respondents in recovering an amount of Rs.6,22,882/- from the applicant is not sustainable. Further, the action of the respondents in recovering the damage rent of the quarter at the market rate is also incorrect, particularly when the transfer of the applicant was temporary. He has been charged at the rate of Rs.5820/- per month (damage) as against the normal rent of Rs.119/-. Hence, damage rent could not have been imposed on him. The applicant had repeatedly requested the railway-authorities to make payment of his pensionary benefits, including pension as he would suffer an irreparable loss but they have not paid any heed to it.

5. In the light of the above, we are of the view that the action of the respondents in effecting recovery and charging damages from the applicant is totally illegal and unwarranted and is required to be quashed and set aside.

6. In the result, the instant OA is allowed and the impugned Annexure A-1 order dated 14.06.2017, issued by the DRM (P), Izatnagar is quashed. The respondents are directed to release the gratuity of the applicant and other pensionary benefits, like monthly pension, commutation of pension, leave salary, insurance etc. The respondents are also directed to pay interest at the GPF rates on the retiral benefits from the date the same became due to him as per the rules on the subject. The respondents shall also refund the amount of recovery/damage rent, if already recovered.

7. In the result, the instant OA is allowed in above terms. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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